

No. 11779

United States
Circuit Court of Appeals
For the Ninth Circuit.

J. R. MASON,

Appellant,

VS.

PARADISE IRRIGATION DISTRICT,

Appellee.

Transcript of Record

Upon Appeal from the District Court of the United States
for the Northern District of California,
Northern Division

FILED
JAN 1948

PAUL P. O'BRIEN,

No. 11779

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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MANDATE OF UNITED STATES CIRCUIT
COURT OF APPEALS

United States of America—ss.

The President of the United States of America to
the Honorable the Judges of the District Court
of the United States for the Northern District
of California, Northern Division, Greeting:

Whereas, lately in the District Court of the United States for the Northern District of California, Northern Division, before you, or some of you, in the Matter of Paradise Irrigation District, Debtor, No. 703, an interlocutory decree was duly filed on the 3rd day of February, 1941, as amended by order of November 24, 1943, which said decree is of record and fully set out in said matter in the office of the Clerk of the said District Court, to which record reference is hereby made, and the same is hereby expressly made a part hereof, and as by the inspection of the Transcript of the Record of the said District Court, which was brought into the United States Circuit Court of Appeals for the Ninth Circuit by virtue of an appeal prosecuted by J. R. Mason, as appellant, against Paradise Irrigation District, as appellee, agreeably to the Act of Congress in such cases made and provided, fully and at large appears:

And Whereas, on the 26th day of March in the year of our Lord One Thousand Nine Hundred and Forty-five the said cause came on to be heard before the said Circuit Court of Appeals, on the said

Transcript of the Record and was duly submitted: [1*]

On Consideration Whereof, it is now here ordered, adjudged and decreed by this Court, that the decree of the said District Court in this cause be, and hereby is, affirmed, with costs in favor of the appellee and against the appellant.

It is further ordered, adjudged and decreed by this Court, that the appellee recover against the appellant for its costs herein expended, and have execution therefor.

(May 11, 1945.)

You, Therefore, Are Hereby Commanded, That such execution and further proceedings be had in the said cause as according to right and justice and the laws of the United States ought to be had, the said appeal notwithstanding.

Witness, the Honorable Harland Fiske Stone, Chief Justice of the United States, the 12th day of June in the year of our Lord One Thousand Nine Hundred and Forty-five.

PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

Amount of costs allowed and taxed in favor of appellee and against appellant as per annexed Bill of Items, Taxed in Detail: \$20.00.

PAUL P. O'BRIEN,

Clerk.

[Endorsed]: Filed June 13, 1945. C. W. Calbreath, Clerk. [2]

* Page numbering appearing at foot of page of original certified Transcript of Record.

[Title of Court and Cause.]

REPORT OF DISBURSING AGENT

To the Honorable Martin I. Welsh, Judge of the
above entitled Court:

The undersigned, Bank of America, National Trust and Savings Association, a national banking association, hereby reports to you in connection with its trust in duties as disbursing agent, to which it was appointed by the Interlocutory Decree entered herein upon February 3, 1941, as amended November 24, 1943, as follows:

I.

That said disbursing agent has received the sum of Fifteen Thousand Two Hundred Thirty-one and 09/100 (\$15,231.09) Dollars, with which to pay to J. R. Mason, the only bond holder of the company who did not consent to the composition, the sum of 52.521 cents on each dollar on the unpaid principal amount thereof, said J. R. Mason, owning bonds of the face value of \$29,000.00.

II.

That no old bonds or other bonds have been paid by it.

III.

That the money now in the hands of the disbursing agent for the purpose of paying the composition figure on the principal of said outstanding bonds is the sum of Fifteen Thousand Two Hundred Thirty-one and 09/100 (\$15,231.09) Dollars. [3]

IV.

That herewith there is transmitted to the Registry of the above named United States Court the last mentioned sum, namely, Fifteen Thousand Two Hundred Thirty-one and 09/100 (\$15,231.09) Dollars.

Respectfully submitted,
BANK OF AMERICA,
NATIONAL TRUST AND
SAVINGS ASSOCIATION,

By J. J. MADIGAN,
Trust Officer.

[Endorsed]: Filed Nov. 15, 1946. C. W. Calbreath, Clerk. [4]

REGISTRY DOCKET PAGE

Title: Paradise Irrigation District

Docket: 7703

Depository

11-15-46 Received from Disbursing Agent 15,231.09

[Title of Court and Cause.]

OBJECTIONS TO PROPOSED FINAL
DECREE

Comes now, J. R. Mason, the sole creditor of the above named Political Subdivision of California affected by the proposed decree, and states that he

has through courtesy of his former attorney W. Coburn Cook just received a copy of the proposed Final Decree Discharge and Order Settling Report and Account of Disbursing Agent herein and objects to the proposed Final Decree and to the proposed draft thereof in the following respects:

1. Said creditor objects to that provision which limits the time allowed within which to accept the funds in the registry of this Court to 12 months, as being without warrant of law, and also as in conflict with Title 28 of the Judicial Code, Secs. 851, 852 which govern the administration of such funds in the Registry of this Court, and which contain no time limitation within which valid claims against such funds may be presented.

2. Objects to that part of the proposed Final Decree which provides that the holders of certain bonds are restrained and permanently enjoined from asserting any claim or demand whatsoever . . . as against the petitioning district.

3. Objects to provisions in the proposed Final Decree which may violate the explicit limitations upon the jurisdiction and authority delegated to its Courts by the Congress, when enacting 11 USCA 401-404, P.L. 481, Ch. 532, Stat. Sec. 13 as amended June 30, 1946, especially those limitations in Sec. 403c, sub(a); 403c, sub(6); 403i; and which may also violate the vested property rights in the bonds held by J. R. Mason that are secured by the Constitutions of the [6] U. S., and of the State of California. (Art. 1, sec. 10, Cl. 1; Fifth,

Eleventh, Fourteenth and Sixteenth Amendments of the U. S. Constitution; and Art. 6, sec. 13; Art. 1, sec. 16; Art. 4, sec. 25, sub 16; Art. 4, sec. 31 of the California Constitution.)

Dated November 27, 1946.

/s/ J. R. MASON,
Objecting Bondholder,
in Pro se.

1920 Lake Street,
San Francisco 21, Calif.

[Endorsed]: Filed Nov. 29, 1946. C. W. Calbreath, Clerk. [7]

[Title of Court and Cause.]

POINTS AND AUTHORITIES IN SUPPORT
OF OBJECTIONS TO PROPOSED FINAL
DECREE

The only purpose of a Final Decree is that of determining that the Bankrupt has made available to creditors the money or other consideration called for by the Interlocutory Decree.

In the U. S. v. Bekins, 304 U. S. 27, case, the Court pointed out that the Ashton, 298 U. S. 513, decision holding the original Ch. IX invalid was based on the thought that the Statute might be so applied as to be repugnant to the traditional doctrine of immunity, and then announced that the amended Ch. IX is "especially solicitous to afford no ground for this objection."

The original statute provided that the Court, even in the Interlocutory Decree, could make the Plan of Composition binding on the Debtor, but the present statute contains no such a provision.

The theory of it seems to be that the Plan of Composition shall be approved by the Interlocutory Decree, and the petitioner is "authorized by law to take all action necessary to be taken by it to carry out the plan" (Sec. 403(e), sub 6, and certain other conditions "Thereupon the court shall enter a final decree determining that the petitioner has made available for the creditors affected by the plan the consideration provided for therein and is discharged from all debts and liabilities dealt with in the plan, . . ." (11 USCA 403 (f).)

In fact, the only thing done by the Final Decree is to enable the Court to verify that the bankrupt has made available [8] the money or other consideration called for in the Interlocutory Decree, and to decree that the plan is binding on the creditors affected by the plan and discharging the bankrupt except as provided therein.

Nothing in the statute places any limitation on the time within which a creditor may present his claim and get the money on deposit with the Court. (11 USCA 401-404.) Nothing in the Plan of Composition nor in the Interlocutory Decree provided for or authorized the insertion of the time limitation in the proposed Final Decree, and petitioner cannot point to any provision in any applicable law, authorizing the 12 month time limitation, or any other limitation on the period within which the

money in the Registry of this Court may be claimed by any person showing a legal right in and to it.

Petitioner has not attempted to show or establish any right, title or interest in or to the funds in the registry of this Court, either now, or a year from now, or at any other future time or event. That funds similarly placed in the registry of this Court do not and cannot be validly claimed as property of the bankrupt was settled by the Court above, in the very recent case of *Bekins v. Compton Delevan I.D.*, 150 Fed. (2d) 526, and *Certiorari* was denied by the U. S. Supreme Court.

The 12 month time limitation in the proposed Final Decree is not permitted by the provisions of Title 28 Judicial Code, Secs. 851, 852 which rule the rights of all parties making claims in or to the funds deposited with the Court, as Registrar, in proceedings like this.

In Section 204 of the Chandler Act (11 USCA § 604) Congress did give its Courts jurisdiction to "fix a time, to expire not sooner than five (5) years after final decree . . . [9] within which . . . holders . . . shall present or surrender their securities," but the omission of any such limitation in 11 USCA 401-404, the base of this proceeding (P.L. 481, Ch. 532, Stat. Section 13, as amended June 30, 1946) is proof that the Congress was willing that State law and decisions remain supreme as regards any statute of limitations.

"To effect a forfeiture, which the law does not favor, the evidence must be clear and con-

vincing and must not call upon a court of equity to do an inequitable thing.”

Hendrix v. Altman Lbr. Co., 145 F. (2d) 501, CCA 5.

The rule applicable to funds in the registry of this Court, in proceedings under other sections of the Bankruptcy Act, are reviewed in the following recent cases:

Louisville & RR Co. v. Robbins, 135 Fed. (2d) 704, CCA 5;

In re Peyton Realty Co., 148 Fed. (2d) 771, CCA 3.

“Federal Courts should scrupulously confine their own jurisdiction to the precise limits which the Statute conferring jurisdiction has defined.”

In re Hartford Acc. Inc. Co., 39 F. Supp. 475.

“The well settled principle of law is that jurisdiction of subject matter may not be conferred upon a tribunal by consent. Nor can jurisdiction be construed to have been acquired by a court because of the consent of one of the parties to a submission of litigation to the court, when in fact and in law, the court is without power to act. Since the jurisdiction of the subject matter cannot be conferred by consent, it can less so be acquired by inference.”

Vaughan v. Vaughan, 35 NYS (2d) 421.

In Dobie, on Federal procedure, Sec. 16, p. 25, it is stated:

“Every federal court is a court of limited jurisdiction. All presumptions are against the jurisdiction of such a court, so that the facts disclosing the jurisdiction must affirmatively appear upon the record.”

In the very recent case of *Berry v. Root*, 148 F. (2d) 945, the Fifth Circuit Court of Appeals ruled that in cases under 11 USCA 401, 404, which is the base of this cause, the Bankruptcy Court

“is not a court of equity but a statutory court created by the Bankruptcy Act and governed by it.”

No interest accrues on the funds in the registry of the Court, and the modification requested can therefore be subject to no valid objection by the debtor, even if the 12 months limitation period had been authorized by any law.

There are, on the other hand, vested property rights under the laws of California embodied in the bonds held by J. R. Mason which are not affected or covered by anything in the Interlocutory Decree of this Court, one of which was construed in the case of *Nevada Bank v. Board of Supervisors of Kern County*, 5 C.A. 638, 91 Pac. 122, and should these bonds have to be presented before the State Courts have passed upon these rights, and actually be physically cancelled by the debtor, the effect of such cancellation on the obligation of tax defaulting and tax evading private land title

holders within the District has been recently construed by the California Courts in *Siwel & Co. v. County of Los Angeles*, 27 Cal. (2d) 724; *Raisch v. Myers*, 27 A.C. 27, p. 793; *Ward v. Chandler Sherman Corp.*, 76 ACA 453.

J. R. Mason would for these and other substantial reasons be injured if the time limitation in the proposed decree should not be stricken from it.

The final decree in the Matter of Glenn Colusa Irrig. Dist., in Bankruptcy, No. 29763L, Southern Division of this Honorable Court, contained no time limitation whatever within which claims must be presented, and numerous other final decrees executed under the provisions of 11 USCA 401-404 contain no time limitation.

2.

It is respectfully submitted that the injunctive restraints in the proposed final decree are inconsistent with Title 11, Sec. 383 in that it does not explain the act or [11] acts covered by the decree. As a matter of fact, petitioner is without any pecuniary rights, being only a Public Trustee whose rights, powers and duties are fixed and governed by State law, exclusively.

Fallbrook v. Bradley, 164 U. S. 112;

Herring v. Modesto, 95 Fed. 705;

Meyerfeld v. S.S.J., 3 Cal. (2d) 409;

Shouse v. Quinley, 3 Cal. (2d) 357;

Provident v. Zumwalt, 12 Cal. (2d) 365;

Fallbrook v. Cowan, 131 Fed. (2d) 513 (Cert. denied);

Happy Valley v. Thornton, 1 Cal. (2d) 325;
In re Horse Heaven L.D., 11 Wash. (2d) 218;
U. S. v. Greer Dr. Dist., 121 F. (2d) 675.

A further ground for objecting to the restraints in the proposed decree is because, as they would apply in the instant case, they are not authorized in a final decree, and would violate the prohibitions in 11 USCA § 1, sub (14)(15); 11 USCA § 1, §§ 107, sub. b. 205; §§ 104, sub. a(4); 28 USCA § 378; 28 USCA § 41(1), sub. (3); 40 USCA § 258a; R.S. § 720; 11 Am. Jur. Conflict of Laws § 30.

See

Arkansas Corp. v. Thompson, 312 U. S. 673,
313 U. S. 132;

Faitoute v. Asbury Park, 316 U. S. 502, 508;
Huddleson v. Dwyer, 322 U. S. 232.

“An injunction restraining the collection of taxes in a State court—a stay not being authorized by any law relating to bankruptcy, is prohibited by 265 Judicial Code, § 28 USCA § 379.”

Brick v. McColgan, 39 F. Supp. 358.

Petitioner, being a statutory trust with fixed and continuing responsibility and duty to levy and collect direct ad-valorem land taxes, as construed in the cases above cited, and without personal pecuniary interest would not be subject to injury of any kind even if some holder of securities should institute an action in the State Court, because no property of the debtor is subject to execution, it being property owned by the State.

El Camino v. El Camino, 12 Cal. (2d) 378.

At bottom, the only interest that might be affected by any State court proceeding, are the holders of title to land made subject to tax upon the borrowing of the money received by the District for the bonds, and whose responsibilities under this State law have been fixed by *Fallbrook v. Bradley*, 164 U. S. 112, and innumerable subsequent federal and state court judgments, which are *res judicata* of issues involved in a land title.

Browning v. Burton, 155 F. (2d) 561. *Certiorari* denied Nov. 12, 1946, 15 U. S. L.W. 3186. Petition No. 542, Oct. Term 1946.

See also

In re *Walter*, 67 F. Supp. 925 (N.Y. D.C.)

The only time any injunction is allowed under 11 USCA 403, is before final decree, as clearly provided in Sec. 403(c) which reads that upon the entry of the order fixing the time for original hearing the judge may, upon notice, enjoin suits against the petitioner pending determination of the petition, which means until the main hearing and determination thereon.

“The scrupulous regard for the rightful independence of State governments which should at all times actuate the Federal Courts, and a proper reluctance to interfere by injunction with their fiscal operations, require that such relief should be denied in every case where the asserted Federal right may be preserved without it . . .

If the remedy at law is plain, adequate and complete, the aggrieved party is left to that remedy in the State courts from which the cause may be brought to this Court for review if any federal questions be involved.”

Great Lakes Dredge & Dock Co. v. Huffman,
391 U. S. 293.

Holders of land may not get an injunction in a federal court to restrain the levy or enforcement of taxes on agricultural land, required by the Constitution and laws of a State.

Tuttle v. Bell, 377 Ill. 510, 37 N.E. (2d) 180.
Certiorari denied, 315 U. S. 815.

The law governing such an injunction by those who fail, [13] neglect or refuse to pay taxes mandatory under the same State law which governs the powers and duties of petitioner in the instant case, was construed in *Wores v. Imperial I.D.*, 227 Pac. 181, by the Supreme Court of California, and has not been modified by any subsequent case. See also, *Tulare I.D. v. Shepherd*, 185 U. S. 1.

When the highest court of a State has ruled on the rights in property under control of a trustee (Petitioner here is a trustee, a statutory public trust) the Bankruptcy Court is bound by the decree of the State Court. *Ohio Oil Co. v. Thompson*, 120 F. (2d) 831.

All property of an Irrigation District, including property in land revested for non-payment of taxes, is held in trust for the uses and purposes of the

Act, which includes the fulfillment of all lawful obligations, and such land is immune from prescription.

Civil Code of California, § 1007.

Proceedings for composition of obligations demand the utmost in good faith by the bankrupt.

Boas v. Bank of America, 51 C.A. (2d) 592.

No claim appears, nor could be validly made, that the removal of the injunctive provisions in the proposed final decree would or could adversely affect any right belonging to or claimed by the petitioner here, or by any other party holding a valid claim.

That the injunction proposed would have one effect, and one only if not stricken, which is that it would constitute an order arresting the execution of valid, and irrepealable land tax statutes, in full force and effect (now codified in the Water Code, Stat. 1943, Ch. 368, Div. 10, 11, Sections 20,000 to 27,758, especially sections 25,200 to 26,553), and would thus result in exonerating petitioner from performing [14] its constitutional and statutory taxing duties.

The testimony of J. Bowers Campbell, counsel for the R.F.C. published in the Hearings dated May 24, 1946, on H.R. 4307, "A Bill to amend Sections 81, 82, 83, 84 of Chapter IX of the Act entitled 'An Act to establish a uniform system of bankruptcy throughout the United States,' approved July 1, 1898, as amended," subsequently amended, reintroduced and reported as H.R. 6682, is as follows (p. 17):

Mr. Campbell . . . I have been a member of the committee for a number of years, and was a member at the time that this bill was prepared.

I agree with the statements of Mr. Parkhurst regarding the notice to landowners for the reason that these proceedings are instituted for the benefit of the landowners. They are the only parties who are taxed and are the only ones who receive benefits from the proceedings. (Emphasis ours.)

(Committee on the Judiciary, House of Rep.,
79 Congress 2d Session.)

The Court may take judicial notice of the effect of abrogating the land taxes within the districts the bonds of which have been surrendered by their holders at a sacrifice figure, or to the Federal Courts in the belief that they had no alternative, or for other reasons deemed sufficient by them. The ceiling thus created on the annual tax rate, by the reduced fixed obligations after the original bonds had been gotten in, at a fraction of their face value, has opened a veritable "Paradise" for speculation in the title deeds to land, thus freed from its ad-valorem taxes.

The unearned increment thus allowed the private holders of title deed to land so greatly freed from its former taxation, equals, if it has not exceeded the losses taken by the former holders of bonds of the district, in every district, including Paradise Irrigation District.

The inconsistency for Congress to create rent ceilings, as a brake on inflation, and at the same time to destroy [15] state rent ceilings to enrich the same economic interests now curbed by the Office of Price Administration (i.e., the private appropriators of rent), is evident.

That no private holder of land is legally entitled to such a windfall, when his claims clash with those of a bondholder, even if the holder of only one bond, has been settled by the Courts, both federal and state. The following cases are but a few.

Fallbrook v. Bradley, 164 U. S. 112;

Herring v. Modesto, 95 F. 705;

Fallbrook v. Cowan, 131 F. (2d) 513 (Certiorari denied);

Selby v. Oakdale, 140 C.A. 171 (Hearing denied by Cal. Sup. Ct.);

Shouse v. Quinley, 3 Cal. (2d) 357;

Provident v. Zumwalt, 12 Cal. (2d) 365;

Anderson Cottonwood I.D. v. Klukkert, 13 Cal. (2d) 191;

Meyerfeld v. South San Joaquin Irr. Dist., 3 Cal. (2d) 409;

Anderson Cottonwood I.D. v. Zinzer, 51 Cal. App. (2d) 582 (Hearing denied by Calif. Supreme Court, June 25, 1942).

“A municipality holds title to property acquired for unpaid taxes in trust for the benefit of bondholders and other creditors of the District.”

State v. Stacey, 116 Pac. (2d) 356 (Wn. Sup. Ct.).

“Evading creditors is not a contemplated activity of a public district, whose bonds are recognized investments for financial institutions. Among other purposes of the act, therefore, is the repayment of the bondholders of the district, and it follows that this is one of the purposes of which the trust money is held. . . .

The land is the ultimate and only source of payment of the bond. It can never be permanently released from the obligation of the bonds until they are paid. (Emphasis ours.)

Provident v. Zumwalt, 12 Cal. (2d) 365.

The injunctive language in the proposed final decree, if allowed, is intended to have the force and effect of unlawfully enriching land-title holders, and has no warrant under any law. Such an injunction is prohibited by U.S.C. 28, § 41(1), sub. (3), and other federal statutes cited above.

Arkansas Corp. v. Thompson, 312 U. S. 673,
313 U. S. 132.

3.

The undersigned creditor, whose claim is on file in this court, holds valid, binding and unpaid original 6% gold bonds of the petitioner, and duly

registered coupons the [16] payment of which has been unlawfully refused for many years.

(*Selby v. Oakdale*, *supra*.)

Most of the bonds are not due or payable, and none are subject to call or redemption before their fixed maturities, even at 100 and accrued interest at 6% to date of maturity of the bond.

These bonds are not contracts between private interests but are in fact, state land-tax and rent anticipation trust obligations backed by the irrevocable tax statutes pursuant to which the money was borrowed by petitioner, the force and effect of which have been clearly and unequivocally settled in the cases cited above.

“Especial care should be had to such decisions when the dispute arises out of the general laws of a State, regulating its exercise of the taxing power, or relating to the State’s disposition of its public lands.”

Wilson v. Standifer, 184 U. S. 399, 412.

“When the highest court of a State, in an appropriate action, has decided that taxes were properly assessed, and are legal and valid under the Constitution and laws of the State, a federal court will not entertain a suit to enjoin their collection.”

Douglas County v. Stone, 191 U. S. 337.

“The levying of State taxes upon the title of private landholders . . . impairs the exercise of no federal function.” (Emphasis ours.)

Petition of S.R.A. v. Minnesota, 18 N.W. (2d) 442. Affirmed by U. S. Supreme Ct., in S.R.A. v. Minn., 14 L.W. 4269.

For the reasons and on the authority of the cases cited, J. R. Mason objects to any and all other provisions in the proposed final decree which do or may be in violation of his vested rights, as a bondholder, which rights are secured by Art. 1, Section 16; Art. 6, Sec. 13; Art. 4, Sec. 25, Sub. 16; Art. 4, Sec. 31 of the California Constitution, and Art. 1, Sec. 10, cl. 1, and the Fifth, Eleventh, Fourteenth [17] and Sixteenth Amendments to the Constitution of the United States of America.

Dated November 27, 1946.

/s/ J. R. MASON,

A creditor, in Pro Se.

1920 Lake Street,
San Francisco 21, Cal.

[Endorsed]: Filed Nov. 29, 1946. C. W. Calbreath, Clerk. [18]

[Letterhead Peters & Peters]

December 2, 1946

Mr. C. W. Calbreath
Clerk of the Federal Court
Sacramento, California

Re: No. 7703, Paradise
Irrigation District.

Dear Sir:

In the above matter, we have received objections to the proposed Final Decree in the above matter. This undoubtedly is served in pursuance of the District's notice to either approve or disapprove the decree as to form.

The proposed objections to the decree do more than approve or disapprove; the Court, in its interlocutory decree ordered the issuance of a final decree and everything is in readiness for such decree.

In the matter, I do not see the need for a hearing, but would appreciate advice as to what the Court deems proper.

Yours very truly,

PETERS & PETERS,
JEROME D. PETERS.

JDP:drb-

cc: H. S. Clewett

Attorney at Law
Paradise, California

Lilliam Compton, Secretary
Paradise, California. [19]

[Title of Court and Cause.]

BRIEF OF PARADISE IRRIGATION
DISTRICT

The brief of J. R. Mason, respondent, has been received.

The writer is not replying to the brief directly, inasmuch as it is completely and wholly beside the point in question and the legal matter involved, namely, the form of the decree.

This case was first tried in the District Court, then appealed by Mr. Mason to the Circuit Court of Appeals, which Court sent it back to the District Court for a further hearing on one matter, namely, the ability of the district to pay under the circumstances. The matter was again tried by the District Court, the decision being in favor of the district. Mr. Mason then appealed to the Circuit Court. There the decision of the District Court was upheld, and Mr. Mason petitioned the United States Supreme Court for a Writ of Certiorari. A Writ of Certiorari was granted by the Supreme Court and the matter was heard and the Supreme Court upheld the decisions of the Appellate and District Courts, which was in favor of the district. Thereupon, Mr. Mason petitioned the United States Supreme court for a rehearing, which was denied. This ended the matter.

For the original decision of the United States Supreme Court, see: [20]

Mason v. Paradise Irrigation District, 326
U. S. 566, 66 S. Ct. 290.

For the denial of the petition by the United States Supreme Court for a rehearing, see

Mason v. Paradise Irrigation District, 327
U. S. 813, 66 S. Ct. 519.

The matter being ended, the district presented to this court its proposed form of final decree, which is in conformation with the decisions of the United States Supreme Court, Circuit Court of Appeals and the District Court. Under the rules governing procedure of the Supreme Court, notice of the presentation of the proposed final decree was given Mr. Mason and under the rules, he had certain time to propose objections "to the form of the proposed decree." Instead of proposing objections to the form of the decree, Mr. Mason proposed objections seeking to try the case all over again and start out where we started out in 1937, almost ten years ago.

The decision of the Supreme Court is final and conclusive. We respectfully submit that the objections of Mr. Mason be overruled, and the decree signed and filed.

Dated May 24, 1947.

Respectfully submitted,

H. S. CLEWETT,

PETERS & PETERS,

By JEROME D. PETERS,

Attorneys for Paradise
Irrigation District.

[Endorsed]: Filed May 27, 1947. [21]

[Title of Court and Cause.]

REPLY BRIEF OF J. R. MASON

The Brief of Paradise Irrigation District, Petitioner, has been received.

The points objected to in the "Objections to proposed Final Decree" filed with this Court Nov. 27, 1946, were not before the U. S. Supreme Court in the case of *Mason v. Paradise I.D.*, 326 U. S. 566.

Petitioner has cited no decision by the U. S. Supreme Court, under a Chap. IX proceeding which supports his argument, or which reverses the principles of constitutional law steadfastly adhered to by the Supreme Courts of the U. S., and of California in the cases cited by respondent. The bald contention that the proposed final decree "is in conformation with the decisions of the U. S. Supreme Court," without any supporting citations, is mere wishful hoping.

It is respectfully submitted that the proposed Final Decree be not signed or filed.

Dated May 28, 1947.

Respectfully submitted,

J. R. MASON,

Respondent in Pro se.

1920 Lake Street

San Francisco 21, Calif.

[Endorsed]: Filed May 29, 1947. C. W. Calbreath, Clerk. [22]

[Title of Court and Cause.]

FINAL DECREE

This Cause came on before me this day to be heard upon the application of petitioning district for an order finally discharging it from all liability for and decreeing the cancellation and annulment of its outstanding old obligations affected by and refinanced pursuant to its plan of composition heretofore approved by this Court, and upon the written report filed with the Clerk of this Court by Bank of America National Trust and Savings Association, the Disbursing Agent heretofore appointed in this cause, and the Court having seen and examined the application and report and the evidence offered in support thereof, and being fully advised in the premises, finds:

(1) That the petition for composition of indebtedness filed in this cause by the petitioning district and the acceptance and approval thereof by holders of more than fifty-one per centum (51%) of its outstanding indebtedness were, in all things, in compliance with law and have been duly approved by this Court; and

(2) That the offer or plan of composition as set forth in the petition filed in this cause was duly accepted in writing and approved by the holders of more than sixty-six and two-thirds per centum ($66\frac{2}{3}\%$) of its outstanding indebtedness affected thereby; was proposed and accepted in good faith; is fair, equitable and just; [23] was to the best

interests of and does not discriminate unfairly in favor of any creditor or class of creditors, and has been duly approved by this Court; and

(3) That in order to raise the funds with which to fully consummate its plan of composition, the petitioning district, with the approval of this Court, has issued and sold its new serial bonds to the Reconstruction Finance Corporation, an agency of the United States Government, in the principal sum of \$252,500, all dated October 1, 1934, bearing interest from date until paid at the rate of four per centum (4%) per annum, payable semiannually, and evidenced by interest coupons thereto attached, the numbers, principal amount and maturity dates thereof being as follows:

| Due Dates | Numbers | | Total Principal |
|--------------|------------|----------|-----------------|
| | \$1000 | \$500 | |
| Jan. 1, 1938 | 1 to 4 | 5..... | \$ 4500.00 |
| Jan. 1, 1939 | 6 to 8 | 10..... | 4500.00 |
| Jan. 1, 1940 | 11 to 15 | ..... | 5000.00 |
| Jan. 1, 1941 | 16 to 20 | ..... | 5000.00 |
| Jan. 1, 1942 | 21 to 25 | 26..... | 5500.00 |
| Jan. 1, 1943 | 27 to 31 | 32..... | 5500.00 |
| Jan. 1, 1944 | 33 to 37 | 38..... | 5500.00 |
| Jan. 1, 1945 | 39 to 44 | ..... | 6000.00 |
| Jan. 1, 1946 | 45 to 50 | ..... | 6000.00 |
| Jan. 1, 1947 | 51 to 56 | 57..... | 6000.00 |
| Jan. 1, 1948 | 58 to 63 | 64..... | 6500.00 |
| Jan. 1, 1949 | 65 to 71 | ..... | 7000.00 |
| Jan. 1, 1950 | 72 to 78 | ..... | 7500.00 |
| Jan. 1, 1951 | 80 to 86 | 87..... | 7500.00 |
| Jan. 1, 1952 | 88 to 95 | ..... | 8000.00 |
| Jan. 1, 1953 | 96 to 103 | ..... | 8000.00 |
| Jan. 1, 1954 | 104 to 111 | 112..... | 8500.00 |
| Jan. 1, 1955 | 113 to 121 | ..... | 9000.00 |

| Due Dates | Numbers | | Total Principal |
|--------------|------------|----------|-----------------|
| | \$1000 | \$500 | |
| Jan. 1, 1956 | 122 to 130 | ..... | \$ 9000.00 |
| Jan. 1, 1957 | 131 to 139 | 140..... | 9500.00 |
| Jan. 1, 1958 | 141 to 150 | ..... | 10,000.00 |
| Jan. 1, 1959 | 151 to 160 | ..... | 10,000.00 |
| Jan. 1, 1960 | 161 to 170 | 171..... | 10,500.00 |
| Jan. 1, 1961 | 172 to 182 | ..... | 11,000.00 |
| Jan. 1, 1962 | 183 to 193 | 194..... | 11,500.00 |
| Jan. 1, 1963 | 195 to 206 | ..... | 12,000.00 |
| Jan. 1, 1964 | 207 to 218 | 219..... | 12,500.00 |
| Jan. 1, 1965 | 220 to 232 | ..... | 13,000.00 |
| Jan. 1, 1966 | 233 to 245 | 246..... | 13,500.00 |
| Jan. 1, 1967 | 247 to 260 | ..... | 14,000.00 |
| | | | <hr/> |
| | | | \$252,500.00 |

and that so far as these proceedings are concerned, the new bonds are valid and enforceable obligations of the petitioning district; and

(4) That prior to the issuance and sale of the new bonds mentioned last above, the Reconstruction Finance Corporation, with the approval of this Court and in accordance with the plan of composition, has purchased certain of the outstanding old obligations of the petitioning district, to wit: Bonds of the district in the principal sum of Four Hundred Forty-seven Thousand (\$447,000.00) Dollars which were later cancelled and delivered to the petitioning district in exchange for its new bonds equal to the amount paid for the old bonds or obligations so purchased, plus four per centum (4%) interest thereon to the date of exchange; and

(5) That from the proceeds received by the petitioning district from the sale of its new bonds to the Reconstruction Finance Corporation, the sum

of Fifteen Thousand Two Hundred Thirty-one and 09/100 (\$15,231.09) Dollars was turned over to the Disbursing Agent who, pursuant to the orders of this Court and the plan of composition approved in this cause, has disbursed none thereof for the purpose of taking up and refinancing certain outstanding old obligations of the district or at all; that the Disbursing Agent has filed in this cause its written report fully showing the amounts received and disbursed by it, the latter being no sum whatever, including the payment into the registry of this Court of the sum of Fifteen Thousand Two Hundred Thirty-one and 09/100 (\$15,231.09) Dollars, being the [25] amount remaining in his hands on the 14th day of November, 1946; and that the report and the receipts and disbursements certified to therein should be confirmed and approved, and the Disbursing Agent discharged from further duties and liabilities as such; and

(6) That the plan of composition is binding upon all creditors affected by it, whether secured or unsecured, and whether or not their claims have been filed or evidenced, and, if filed or evidenced, whether or not allowed, including creditors who have not, as well as those who have, accepted it; and that petitioner has made available for the creditors affected by the plan the consideration provided for therein and should be discharged from all debts and liabilities dealt with in the plan, except as provided therein; and

(7) That all costs, expenses, fees and other charges properly chargeable to the petitioning district in this cause, have been duly approved and paid.

It Is Therefore Ordered, Adjudged and Decreed as follows:

(a) That the receipts and disbursements by, and the other official acts of Bank of America National Trust and Savings Association, Disbursing Agent, as set forth and certified to in its report filed in this cause, be and the same are hereby approved and confirmed, and that his duties as Disbursing Agent be terminated and his liabilities thereunder be forever discharged; and

(b) That the sum of Fifteen Thousand Two Hundred Thirty-one and 09/100 (\$15,231.09) Dollars, paid into the registry of this Court by the Disbursing Agent, be disbursed by the Registrar for the purpose of taking up and retiring and refinancing, in accordance with the plan [26] of composition approved in this cause, such remaining outstanding old obligations of the petitioning district as are affected by the plan of composition, and which may be presented to the Registrar for that purpose within the period of twelve months from the date of this final decree becomes final; that all such obligations so presented and paid for, be forthwith cancelled and returned to the petitioning district by the Registrar; that all such outstanding old obligations of the petitioning district which are not so presented to the Registrar within said period of

twelve months shall thereafter be forever barred from participating in the plan of composition or in the funds held in the registry of this Court; that upon the expiration of the said period of twelve months, the Clerk of this Court shall forthwith notify the Reconstruction Finance Corporation, by registered letter addressed to it at Washington, D. C., of the amount of funds then remaining in the registry of the Court, and that the same are available for the purchase of new bonds of the petitioning district then held by the Reconstruction Finance Corporation, at par and accrued interest; that any new bonds so purchased shall be forthwith cancelled and returned to the petitioning district by the Registrar; that any part of such funds which are not used for such purpose within sixty days from the date of mailing of such notice, shall thereupon be paid by the Registrar of this Court to and used solely by the petitioning district in the payment of its new bonds and interest thereon; and

(c) That all the old bonds and other obligations of the petitioning district affected by the plan of composition approved in this cause, whether heretofore surrendered and cancelled or remaining outstanding, and by whomsoever held, are hereby cancelled, annulled and held for naught as enforceable obligations of the petitioning district, except as herein provided, and that the holders thereof be and they are hereby forever restrained and enjoined from otherwise asserting any claim or demand whatsoever therefor as against the petition-

ing district or its officers, or against the property situated therein or the owners thereof; and

(d) That the new or refunding bonds issued and sold by the petitioning district to the Reconstruction Finance Corporation and the collection of the principal and interest thereon, shall not in any wise be adversely affected by these proceedings, or by any order, judgment or decree entered or rendered in this cause; and

(e) That all proceedings necessary for fully affecting the plan of composition contemplated by this action, except the ministerial duties of the Registrar of this Court as provided herein, have been done and performed in accordance with law, and that all and singular orders, judgments and decrees heretofore entered and rendered in this cause, be and the same are hereby ratified and confirmed.

Done at Sacramento, California, on this the 24th day of September, 1947.

DAL M. LEMMON,
Judge.

[Endorsed]: Filed Sept. 24, 1947. C. W. Calbreath, Clerk. [28]

[Title of Court and Cause.]

NOTICE OF APPEAL

Notice Is Hereby Given that J. R. Mason, a creditor of Paradise Irrigation District owning and

holding original 6% bonds issued by said District, does appeal to the Circuit Court of Appeals of the United States in and for the Ninth Circuit from the Final Decree entered in this proceeding September 24, 1947, and from the whole thereof.

Dated, San Francisco, California, October 21, 1947.

/s/ J. R. MASON,

A creditor, Pro Se.

Address, 1920 Lake Street, San Francisco 21, Calif.

[Endorsed]: Filed Oct. 21, 1947. C. W. Calbreath, Clerk. [29]

[Title of Court and Cause.]

STATEMENT OF POINTS ON APPEAL

1. The final decree, as applied, is ultra vires the Congress.

2. The decree, as applied, conflicts with California laws which control the duties and obligations of the debtor.

3. The decree, as applied, contravenes the land laws of California controlling the rents, issues and profits of land within its domain.

4. The decree, as applied, impairs vested property rights of bondholders in violation of the 5th Amendment of U. S. Constitution.

5. The decree, as applied to the still outstanding original bonds, impairs a contract and trust obliga-

tion executed by the State of California, and secured by Art. 1, sec. 10, cl. 1 of U. S. Constitution, and by Art. 1, sec. 16 and Art. 6, sec. 13 of California Constitution.

6. The decree limiting acceptance of the funds in custodia legis to 12 months is an error of law.

7. The injunctive provisions in the final decree, as applied, are an error of law, and a gift of public funds prohibited by Art. IV, sec. 31 of the California Constitution.

8. The decree, which provides full payment of the investment made by the RFC in the form of long term interest bearing bonds, but denies equal treatment to the lawful [30] holder of valid, binding and unpaid original 6% gold bond obligations, ordering him to get a compromise cash figure without interest, is discriminatory, and unfair, and is an error of law.

J. R. MASON,

A creditor, Pro Se.

1920 Lake Street, San Francisco 21, California.

October 21, 1947.

[Endorsed]: Filed Oct. 21, 1947. C. W. Calbreath, Clerk. [31]

[Title of Court and Cause.]

DESIGNATION OF CONTENTS OF RECORD
ON APPEAL

Appellant designates the following as those parts of the record on appeal as necessary for the consideration of the points upon which he intends to rely in this appeal:

1. All that portion of the record in this cause which was transmitted by the Clerk of this Court to the Clerk of the Circuit Court of Appeals for the Ninth Circuit and printed by said Clerk in the case of the appeal entitled: "J. R. Mason v. Paradise Irrigation District, No. 9925, in the United States Circuit Court of Appeals for the Ninth Circuit."

2. The mandate of said Court.

3. Petition for Final Decree.

4. Objections to Proposed Final Decree, dated Nov. 27, 1946.

5. Brief of J. R. Mason, dated May 1947.

6. Final Decree.

7. Notice of appeal.

8. Statement of points on appeal.

9. This designation and any stipulations and orders made subsequent hereto.

Dated October 21, 1947.

J. R. MASON,

A creditor, Pro Se.

[Endorsed]: Filed Oct. 21, 1947. C. W. Calbreath, Clerk. [32]

[Title of Court and Cause.]

DESIGNATION OF ADDITIONAL CONTENTS
OF RECORD ON APPEAL

Appellant designates the following as additional parts of the record on appeal as necessary for the presentation of appellee's case.

1. Letter of Peters & Peters to Mr. C. W. Calbreath, Clerk of the Federal Court, Sacramento, California, dated December 2, 1946.

2. Brief of Paradise Irrigation District, dated May 24, 1947.

3. Report of Disbursing Agent filed on or about September 25, 1946.

4. Entry in the office of the clerk for the deposit of the sum of Fifteen Thousand Two Hundred Thirty-one and 09/100 (\$15,231.09) Dollars to be paid to appellee upon presentation of his bonds.

Dated October 30, 1947.

PETERS & PETERS,
Attorneys for Appellee.

[Endorsed]: Filed Oct. 31, 1947. C. W. Calbreath, Clerk. [33]

[Title of Court and Cause.]

CERTIFICATE OF CLERK, U. S. DISTRICT
COURT, TO TRANSCRIPT ON APPEAL

I, C. W. Calbreath, Clerk of the United States District Court for the Northern District of California, do hereby certify that the foregoing 33 pages, numbered from 1 to 33, inclusive, contain a full, true and correct transcript of certain records, and proceedings in the matter of the Paradise Irrigation District, No. 7703, as the same now remain on file and of record in this office; said transcript having been prepared pursuant to and in accordance with the Designation and Counter-designation of Portions of the Record to be contained in the Record on Appeal, copies of which are embodied herein.

I further certify that the cost of preparing and certifying the foregoing Record on Appeal is the sum of Thirteen and 20/100 (\$13.20), and that the same has been paid to me by the appellant herein.

In witness whereof, I have hereunto set my hand and the official seal of said District Court, this 8th day of November, A.D. 1947.

[Seal] C. W. CALBREATH,
Clerk.

By /s/ F. M. LAMPERT,
Deputy Clerk. [34]

[Endorsed]: No. 11779. United States Circuit Court of Appeals for the Ninth Circuit. J. R. Mason, Appellant, vs. Paradise Irrigation District, Appellee. Transcript of Record. Upon Appeal from the District Court of the United States for the Northern District of California, Northern Division.

Filed November 10, 1947.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

United States Circuit Court of Appeals
for the Ninth Circuit

No. 11,779

J. R. MASON,

Appellant,

vs.

PARADISE IRRIGATION DISTRICT,

Appellee.

DESIGNATION OF CONTENTS OF RECORD
ON APPEAL

Appellant designates the following as those parts of the record on appeal as necessary for the consideration of the points on which he intends to rely in this appeal.

1. All that portion of the record which was transmitted by the Clerk of the District Court

to the Clerk of this Court in the case of the appeal entitled: "J. R. Mason v. Paradise Irrigation District, No. 9925 in the United States Circuit Court of Appeals for the Ninth Circuit."

2. The mandate of said Court.
3. Petition for Final Decree.
4. Objections to proposed Final Decree, dated Nov. 27, 1946.
5. Final Decree.
6. Notice of Appeal.
7. Statement of Points on Appeal.
8. This designation and any stipulations and orders made subsequent hereto.

Dated, San Francisco, California, November 20, 1947.

/s/ J. R. MASON,
A Creditor, Pro. Se.

1920 Lake Street.

[Endorsed]: Filed Nov. 19, 1947.

[Title of Circuit Court of Appeals and Cause.]

STATEMENT OF POINTS ON WHICH
APPELLANT INTENDS TO RELY

Appellant hereby designates as the Statement of Points on which he intends to rely in this Appeal the "Statement of Points on Appeal" which is included in the Transcript of Record prepared by the Clerk of the U. S. District Court filed herein on or about Nov. 11, 1947.

Dated November 20, 1947.

/s/ J. R. MASON,
Appellant Pro Se.

[Endorsed]: Filed Nov. 19, 1947.

[Title of Circuit Court of Appeals and Cause.]

State of California,
City and County of San Francisco—ss.

J. R. Mason, being duly sworn, says:

That he is the Appellant in this cause; that he has designated as a portion of the Record on Appeal the printed Record on Appeal which was docketed in the Circuit Court of Appeals for the Ninth Circuit in the case of "J. R. Mason v. Paradise Irrigation District, No. 9925," and it appears that it should be unnecessary to reprint the said Record on Appeal or that it should be recopied, certified again by the Clerk of the United States District

Court from which this appeal originates, and reprinted, and it will be possible to produce at least four copies of the said Transcript of Record including those which may be already on file in said United States Circuit Court of Appeals and for these reasons appellant requests that an order be made ex parte providing for the use of the Transcript of Record in said cause No. 9925 as a part of the Record on Appeal herein, and dispensing with the necessity of printing the same upon the filing of four copies of said Transcript of Record including such copies as may be on file with the Clerk of the said U. S. Circuit Court of Appeals.

/s/ J. R. MASON,
Appellant, Pro Se.

Subscribed and sworn to before me this 25th day of November, 1947.

[Seal] /s/ VIOLET NEUENBURG,
Notary Public in and for the City and County of
San Francisco, State of California.

My commission expires January 3, 1951.

It is so ordered.

Dated November 26, 1947.

/s/ FRANCIS A. GARRECHT,
Judge, U. S. Circuit
Court of Appeals.

[Endorsed]: Filed Nov. 25, 1947.

